CENTRALFIELDS SDN BHD v. KETUA PENGARAH HASIL DALAM NEGERI

HIGH COURT MALAYA, SHAH ALAM
SHAHNAZ SULAIMAN J
[JUDICIAL REVIEW NO. BA-25-54-08-2023]
18 JULY 2025

Abstract – *Where a court is asked to consider the legal validity of a statutory provision or its application, and the matter involves public interest or fiscal implications affecting the State, the general presumption is that any judicial declaration of invalidity should operate prospectively, that is, only from the date of the judgment forward. This approach upholds the principles of legal certainty and fairness, ensuring that parties who acted in reliance on the law as it stood at the relevant time are not unfairly prejudiced by subsequent judicial developments. Judicial declarations of invalidity, particularly when applied retroactively, have the potential to disrupt legal relationships and expectations, thereby creating confusion and injustice.*

ADMINISTRATIVE LAW: *Judicial review – Application for – Constitutionality of s. 4C of Income Tax Act 1967 – Compensation received by landowner for acquisition of lands subjected to tax – Case of Wiramuda (M) Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri declaring s. 4C unconstitutional – Whether ruling made by Wiramuda applied retrospectively – Whether landowner entitled to refund of taxes – Whether there were exceptional and compelling considerations – Whether judicial declarations of unconstitutionality or invalidity should operate prospectively*

REVENUE LAW: *Income tax – Compensation – Compensation received by landowner for acquisition of lands subjected to tax – Constitutionality of s. 4C of Income Tax Act 1967 – Case of Wiramuda (M) Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri declaring s. 4C unconstitutional – Whether ruling made by Wiramuda applied retrospectively – Whether landowner entitled to refund of taxes – Whether there were exceptional and compelling considerations – Whether judicial declarations of unconstitutionality or invalidity should operate prospectively*

The applicant, a company engaged in property development and investment, received compensation from the Selangor State Authority for a piece of land under s. 16 of the Land Acquisition Act 1960. The land was held as stock-in-trade by the company. The company submitted its tax return (Borang C) for the year of assessment 2016 ('YA 2016') in compliance with s. 77A of the Income Tax Act 1967 ('ITA'). The applicant declared in its YA 2016 tax return that the compensation from the compulsory land acquisition was taxable under s. 4C of the ITA. As the tax return was filed, the assessment for YA 2016 was deemed to have been made under s. 90 of the same Act. Subsequently, the Federal Court ruled in the case of *Wiramuda (M) Sdn Bhd*

v. Ketua Pengarah Hasil Dalam Negeri ('Wiramuda') that s. 4C of the ITA was unconstitutional. Citing this decision, the applicant wrote to the respondent requesting for a tax refund for YA 2016 and demanded a response by a certain date, failing which legal action would be taken. The applicant filed in their judicial review application. The issue that arose was whether the Federal Court's decision of *Wiramuda* applied retrospectively or prospectively.

Held (dismissing application for judicial review):

(1) The retrospective invalidation of legislation or a legislative provision fundamentally undermines the principles of legal certainty, predictability, and the rule of law. These principles are essential to ensure that individuals and entities can rely on the law as it is written and applied at the time of their actions. Judicial declarations of invalidity, particularly when applied retroactively, have the potential to disrupt settled legal relationships and expectations, thereby creating confusion and injustice. (para 44)

(2) As a general rule, unless there exist exceptional and compelling considerations of overriding public interest, judicial declarations of unconstitutionality or invalidity should operate prospectively only. Prospective application serves to preserve the integrity of past transactions and decisions that were undertaken in good faith reliance on the presumed validity of the impugned legislative provision. (para 45)

(3) The retrospective application of such a ruling may expose parties, including private individuals, businesses, and Government agencies, to legal liabilities, regulatory non-compliance, or loss of rights that were previously recognised under the invalidated provision. Accordingly, this court ought to exercise judicial restraint and caution when considering the temporal scope of its decisions, particularly in constitutional or administrative law contexts where the consequences of retrospective application are far-reaching. Moreover, this case implicated matters of significant public interest, particularly given the substantial quantum involved. At the time the assessment for the YA 2016 was made, the relevant statutory provision was part of a duly enacted legislation, validly passed by Parliament and in force. (paras 46 & 47)

(4) Where a court is asked to consider the legal validity of a statutory provision or its application, and the matter involves public interest or fiscal implications affecting the State, the general presumption is that any judicial declaration of invalidity should operate prospectively, that is, only from the date of the judgment forward. This approach upholds the principles of legal certainty and fairness, ensuring that parties who acted in reliance on the law as it stood at the relevant time are not unfairly prejudiced by subsequent judicial developments. Thus, the

declaration of the Federal Court in *Wiramuda* that s. 4C of the ITA was unconstitutional was to be applied prospectively. Therefore, s. 4C of the ITA was a valid law during the assessment raised (YA 2016). (paras 48-50)

Case(s) referred to:

Abdul Rahman Abdullah Munir & Ors v. Datuk Bandar Kuala Lumpur & Anor [2008] 6 CLJ 805 CA ***(refd)***

Abillah Labo Khan v. PP [2002] 3 CLJ 521 CA ***(refd)***

Aminah Ahmad v. The Government Of Malaysia & Anor [2022] CLJU 24; [2022] 1 LNS 24 CA ***(foll)***

Ang Ming Lee & Ors v. Menteri Kesejahteraan Bandar, Perumahan Dan Kerajaan Tempatan & Anor And Other Appeals [2020] 1 CLJ 162 FC ***(refd)***

Council of Civil Service Unions & Ors v. Minister of Civil Service [1985] AC 374 ***(refd)***

Deustch Morgan Grenfall Group Plc v. Her Majesty's Commissioner Of Inland Revenue And Another [2006] UKHL 49 ***(refd)***

Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor [2015] 3 CLJ 861 FC ***(refd)***

Malayan United Industries Bhd v. Ketua Pengarah Hasil Dalam Negeri & Anor [2006] 5 CLJ 240 HC ***(refd)***

Obata-Ambak Holdings Sdn Bhd v. Prema Bonanza Sdn Bhd & Other Appeals [2024] 8 CLJ 519 FC ***(foll)***

Pelangi Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri [2012] 1 MLJ 825 ***(refd)***

R Rama Chandran v. Industrial Court Of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***

Re Bukit Sembawang Rubber Co Ltd v. Sembawang Estates Ltd [1961] CLJU 102; [1961] 1 LNS 102 ***(refd)***

Sebel Products Ltd v. Customs And Excise Comrs [1949] Ch 409 ***(refd)***

Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case [2017] 5 CLJ 526 FC ***(foll)***

Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union [1995] 2 CLJ 748 CA ***(refd)***

The Government Of Malaysia & Anor v. Aminah Ahmad [2023] 8 CLJ 1 FC ***(refd)***

Winsome Al-Yatama Sdn Bhd & Anor v. Pentadbir Tanah Kota Tinggi [2015] 9 CLJ 110 HC ***(refd)***

Wiramuda (M) Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri [2023] 8 CLJ 21 FC ***(refd)***

Woolwich Equitable Building Society and Inland Revenue Commissioners [1993] AC 70 ***(refd)***

Legislation referred to:

Federal Constitution, art. 96

Housing Development (Control and Licensing) Regulations 1989, reg. 11

Income Tax Act 1967, ss. 4C, 77A, 90(1), 97, 99, 111(2)

Land Acquisition Act 1960, s. 16

Rules of Court 2012, O. 53 r. 3(6)

For the applicant - Bahari Yeow Tien Hong & Dharshini Sharma Rohit Kumar Sharma; M/s Rosli Dahlan Saravana Partnership

For the respondent - Mohd Harris Hanapi; SRC & Azleena Md Khairuddin; RC

Reported by Suhainah Wahiduddin

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JUDGMENT

Shahnaz Sulaiman J:

Introduction

[1] This application for judicial review relates to s. 4C of the Income Tax Act 1967 ("ITA") which the Federal Court in *Wiramuda (M) Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2023] 8 CLJ 21; [2023] 4 MLJ 753 held to be unconstitutional.

[2] The only issue before this court for determination is whether the respondent had committed an error of law in disallowing the applicant's application for refund of taxes paid under s. 4C of the ITA.

Reliefs Sought

[3] The reliefs sought by the applicant in this application are reproduced below:

(i) a declaration that the taxes collected by the Director General of Inland Revenue ("DGIR") pursuant to s. 4C of the Income Tax Act 1967 ("ITA") is unconstitutional pursuant to the decision of the Federal Court in the *Wiramuda (M) Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* (Civil Appeal No: 01(f)-38-08/2022 (W));

(ii) a declaration that the taxes amounting to RM7,692,569.04 collected by the DGIR from the applicant under s. 4C of the ITA are illegal and unlawful;

(iii) a declaration that the taxes amounting to RM7,692,569.04 collected by the DGIR under s. 4C of the ITA from the applicant constitute an unjust enrichment;

(iv) an order that the DGIR shall return to the applicant within 14 days from the order of this Honourable Court the taxes amounting to RM7,692,569.04 collected from the applicant under s. 4C of the ITA; and

(v) an order that the DGIR shall pay interest accruing at the rate of 8% on the sum of RM7,692,569.04 (being the taxes that DGIR is to return to the applicant) from the date the said sum was paid in full by the applicant to the DGIR (ie, on 15.3.2018) until the date of the said sum is returned in full to the applicant;

(vi) that all necessary and consequential directions and orders be given;

(vii) that the costs of this application be costs in the cause; and

(viii) all other and further relief which this Honourable Court deems fit and proper.

Factual Background

[4] Centralfields Sdn Bhd is engaged in property development and investment. On 31 May 2016, it received compensation from the Selangor State Authority for land (PT 3790, HSD 155803, Mukim Sungai Buloh, Daerah Petaling) under s. 16 of the Land Acquisition Act 1960. The land was held as stock-in-trade by the company.

[5] On 21 August 2017, the company submitted its tax return (Borang C) for the year of assessment 2016 in compliance with s. 77A of the Income Tax Act 1967.

[6] The applicant declared in its YA 2016 tax return that the compensation from the compulsory land acquisition was taxable under s. 4C of the Income Tax Act 1967.

[7] As the tax return was filed, the assessment for YA 2016 is deemed to have been made under s. 90 of the same Act.

[8] No appeal was lodged by the applicant to the Special Commissioner of Income Tax (SCIT) against the assessment raised on 21 August 2017 for YA 2016 under s. 99 of ITA 1967.

[9] On 9 December 2022, the Federal Court ruled in the *Wiramuda (M) Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2023] 8 CLJ 21; [2023] 4 MLJ 753 case that s. 4C of the Income Tax Act 1967 is unconstitutional.

[10] Citing this decision, the applicant wrote to the respondent on 27 June 2023 requesting a tax refund for YA 2016 and demanded a response by 25 July 2023, failing which legal action would be taken.

[11] On 9 August 2023 the applicant filed in their judicial review application.

Principles Relating To Judicial Review

[12] Order 53 of the Rules of Court 2012 provides for the procedures for an application for judicial review.

[13] It is trite law that a decision in relation to the exercise of public duty or function may be reviewed on grounds of illegality, irrationality, procedural impropriety or disproportionality.

[14] These grounds were laid down by Lord Diplock in the case of *Council of Civil Service Unions & Ors v. Minister of Civil Service* [1985] AC 374 which was adopted by the Federal Court in the case of *R Rama Chandran v. Industrial Court Of Malaysia & Anor* [1997] 1 CLJ 147; [1997] 1 MLJ 145 as follows:

> In this context, it is useful to note how Lord Diplock (at pp. 410-411) defined the three grounds of review, to wit, (i) illegality, (ii) irrationality, and (iii) procedural impropriety. This is how he put it:

A By 'illegality' as a ground for Judicial Review I mean that the decision maker must understand directly the law that regulates his decision making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of a dispute, by those persons, the judges, by whom the judicial power of the state is exerciseable.

B By 'irrationality' I mean what can by now be succinctly referred to as *Wednesbury* unreasonableness' (see *Associated Provincial Picture Houses Ltd v. Wednesbury Corp* [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied C his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the courts' exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious D explanation in *Edwards v. Bairstow* [1956] AC 14, of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though undefinable mistake of law by the decision maker. 'Irrationality' by now can stand on its own feet as an accepted ground on which a decision may be attacked by Judicial Review.

E I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failing to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to Judicial Review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the F legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.

Lord Diplock also mentioned 'proportionality' as a possible fourth ground of review which called for development.

G **[15]** Further, in the case of *Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union* [1995] 2 CLJ 748; [1995] 2 MLJ 317, an error of law has been described as follows:

It is neither feasible nor desirable to attempt an exhaustive definition of what amounts to an error of law, for the categories of such an error are not closed. But it may be said that an error of law would be disclosed if H the decision-maker asks himself the wrong question or takes into account irrelevant considerations or omits to take into account relevant considerations (what may be conveniently termed an *Anisminic* error) or if he misconstrues the terms of any relevant statute, or misapplies or misstates a principle of the general law.

I **[16]** Founded on the principles of judicial review, this court will proceed to consider the grounds raised by the applicant in this case.

Analysis And Findings

[17] The crux in this application for judicial review can be reduced to this: whether the Federal Court's decision in *Wiramuda (M) Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2023] 8 CLJ 21; [2023] 4 MLJ 753 applies retrospectively or prospectively.

[18] Learned counsel for the applicant, Mr Saravana argued that it is trite law that a judgment is retrospective unless specified otherwise. The Malaysian courts have referred to this as the doctrine of prospective overruling.

[19] Learned counsel cited the Federal Court case of *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case* [2017] 5 CLJ 526; [2017] 3 MLJ 561 as reproduced below:

> [126] As regards the present s. 40D of the Act, since we have declared it to be unconstitutional, our decision is to have prospective effect. The doctrine of prospective overruling will apply here so as not to give retrospective effect to the declaration made.
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> [127] As a matter of principle, a court judgment is "retrospective in effect unless a specific direction of prospectively is expressed". This principle has been decided by the Federal Court in *Public Prosecutor v. Mohd Radzi bin Abu Bakar* [2005] 6 MLJ 393.

[20] Reference was also made by learned counsel for the applicant to the case of *Abillah Labo Khan v. PP* [2002] 3 CLJ 521; [2002] 3 MLJ 298.

[21] It was further submitted by the applicant that where a taxpayer had paid taxes on a legislation which was later declared unlawful, the taxpayer has a right to restitution of the taxes paid with interest. In support of this argument, learned counsel for the applicant cited the case of *Woolwich Equitable Building Society and Inland Revenue Commissioners* [1993] AC 70.

[22] Article 96 Federal Constitution reads:

> No tax or rate shall be levied by or for the purposes of the Federation except by or under the authority of federal law.

[23] According to the applicant, art. 96 clearly provides that no tax or rate shall be levied by or for the purposes of the Federation except under the authority of Federal law. Hence, in the event a law has been declared unconstitutional, any taxes paid under that law is deemed to be paid illegally. Learned counsel cited the case of *Sebel Products Ltd v. Customs And Excise Comrs* [1949] Ch 409; *Pelangi Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2012] 1 MLJ 825 and *Deustch Morgan Grenfall Group Plc v. Her Majesty's Commissioner Of Inland Revenue And Another* [2006] UKHL 49.

[24] It was further submitted by learned counsel for the applicant that there exists no alternative remedy in this instance and that s. 99 of the ITA is not available as s. 99 only arises when there is an assessment made, which the applicant argued is not the case here. In support of this contention, the applicant cited the case of *Malayan United Industries Bhd v. Ketua Pengarah Hasil Dalam Negeri & Anor* [2006] 5 CLJ 240.

[25] In reply the respondent argued that the Federal Court's declaration that s. 4C of the ITA unconstitutional is to be read prospectively. What this entails is that the decision of the Federal Court in *Wiramuda* (*supra*) will only apply to cases and assessment raised pursuant to s. 4C of the ITA after the decision of *Wiramuda* (*supra*).

[26] In the Federal Court decision of *Obata-Ambak Holdings Sdn Bhd v. Prema Bonanza Sdn Bhd & Other Appeals* [2024] 8 CLJ 519; [2024] 5 MLJ 897, the court deliberated on the issue of whether its judgments should apply prospectively or retrospectively. This discussion was particularly pertinent in light of the earlier Federal Court ruling in *Ang Ming Lee & Ors v. Menteri Kesejahteraan Bandar, Perumahan Dan Kerajaan Tempatan & Anor And Other Appeals* [2020] 1 CLJ 162; [2020] 1 MLJ 281. In that landmark decision, the court had declared that reg. 11 of the Housing Development (Control and Licensing) Regulations 1989 (HDR 1989) was *ultra vires* the parent legislation, namely the Housing Development (Control and Licensing) Act 1966 (HDA 1966).

[27] Learned Senior Revenue Counsel submitted that in *Ang Ming Lee* (*supra*), the Federal Court did not explicitly consider or provide guidance on whether the effect of its ruling should operate retrospectively, thereby invalidating past applications of the impugned regulation, or only prospectively, affecting future conduct and decisions. This omission left a legal vacuum, raising uncertainties about the scope and impact of the judgment on past transactions and pending disputes. It was in this context that the *Obata-Ambak* (*supra*) case emerged as a pivotal moment, as the court was called upon to confront the issue of temporal application of judicial pronouncements, particularly those declaring subordinate legislation to be invalid.

[28] The Federal Court in *Obata-Ambak* (*supra*) took into account existing laws which were valid at the time of signing of the sale purchase agreements and held the following:

> [160] In *Ang Ming Lee* this court declared that reg. 11(3) of the HDR *ultra vires* the HDA, and thus, the extension granted by the Controller was invalid. *Ang Ming Lee*, however, is silent as to whether the effect of declaring reg. 11(3) of the HDR *ultra vires* would apply retrospectively or prospectively. This means that any extension granted by the Controller

would be invalid prior to *Ang Ming Lee* and house buyers would be entitled to LAD to be calculated up to *Ang Ming Lee* notwithstanding the fact that they may have been paid LAD and vacant possession have been delivered. This cannot be so, as it will result in substantive injustice as it will impair the rights of the parties involved. At the time the extension was granted the law, that is reg. 11(3) of the HDR was valid and reliance was placed based not only on the statutory regime at that time allowing such extension to be granted and extending the prescribed 36 months completion period but also the terms of the executed SPAs were based on the approved extension as required by the law.

...

[164] The statutory regime at the time when extension was applied and granted was valid. As we have stated above great reliance was placed by both the developers and controller that the authority exists. The Minister was empowered to delegate the power to grant extension to the controller. Furthermore, the parties, that is, the developers and the purchasers had relied and accepted the terms of the SPAs where the extended completion period approved by the Controller had been expressly provided. Parties are bound by the terms of the contract and cannot rewrite the terms which they have accepted and from which they have benefitted.

[29] The respondent further argued that s. 4C of the ITA was a valid law during the assessment raised. According to the respondent, s. 4C of the ITA 1967 was introduced through the Finance Act 2014 (Act 761), which was duly passed and enacted by Parliament, thereby rendering it a valid and enforceable statutory provision.

[30] Reference was made to the huraian (explanatory notes) to the Rang Undang-Undang Kewangan (No. 2) 2013, the said provision came into force beginning from the year of assessment (YA) 2014 onwards. In the present matter, the relevant year of assessment is YA 2016. At that time, s. 4C of the ITA 1967 was fully in force and had not been declared unconstitutional. It is evident that the applicant complied with the law as it then stood.

[31] Reference is also made to para. 7 of the applicant's own affidavit in support, wherein it is admitted that:

14.11.2017 Upon receiving the compensation, *vide* a letter dated 14.11.2017, the applicant requested for an instalment payment of the taxes amounting to RM7,692,569.04 from the respondent.

[32] Thus, the respondent submitted that this unequivocally indicates that the land in question, which was acquired by the Government, was treated by the applicant as forming part of its stock-in-trade. The applicant voluntarily filed its tax return on that basis, declaring the land as stock-in-trade without raising any objection at that material time.

[33] The respondent submitted that pursuant to s. 111(2) of the ITA 1967, any claim for a tax refund by the applicant must be made within a five-year period. In the present case, it is evident that the prescribed limitation period has already expired.

[34] Furthermore, the respondent argued that the tax assessment for the year of assessment (YA) 2016 was issued on 21 August 2017, as evidenced by exh. "KKO-12". This assessment was based on the applicant's own self-declaration. As there was no appeal lodged under s. 99 of the ITA 1967 within the stipulated time frame, the said assessment has become final and conclusive pursuant to s. 97 of the ITA 1967.

[35] The respondent further contended there is no decision from the respondent and the applicant cannot treat a non-reply to the applicant's letter dated 27 June 2023 before 25 July 2023 a decision amenable to an application for judicial review under O. 53 of the ROC. The respondent cited *Re Bukit Sembawang Rubber Co Ltd v. Sembawang Estates Ltd* [1961] CLJU 102; [1961] 1 LNS 102; [1961] 1 MLJ 269; *Abdul Rahman Abdullah Munir & Ors v. Datuk Bandar Kuala Lumpur & Anor* [2008] 6 CLJ 805; [2008] 6 MLJ 718 and *Winsome Al-Yatama Sdn Bhd & Anor v. Pentadbir Tanah Kota Tinggi* [2015] 9 CLJ 110 in support of this argument.

[36] It was further argued that the respondent issued a deemed assessment for YA 2016 on 21 August 2017 pursuant to s. 90(1) of the ITA 1967. The applicant failed to file the judicial review application within the three-month time limit prescribed under O. 53 r. 6 of the Rules of Court 2012. The applicant is now attempting to circumvent the expired time frame by relying on a recent letter referencing YA 2016 to restart the limitation period.

[37] The respondent raised a preliminary objection on the issue of the failure of the applicant to file this application within the compulsory period of time prescribed in O. 53 r. 3(6) of the Rules of Court 2012 and the failure of the applicant to apply for an extension of time to file this application.

[38] The respondent submits that the core of the applicant's judicial review application is to challenge the assessment issued on 21 August 2017 for YA 2016, seeking both to quash the assessment and to obtain a tax refund. However, there is a delay of nearly six years between the date of the assessment and the filing of the application on 9 August 2023. (*Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor* [2015] 3 CLJ 861).

[39] The respondent also contended that the facts in *Wiramuda* (*supra*) and this current application can be distinguished.

[40] The Federal Court, had on 9 December 2022 declared s. 4C of the ITA as unconstitutional. Nonetheless, the Federal Court did not address whether the decision is to be applied retrospectively.

[41] In this regard, this court alluded to the case of *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case* [2017] 5 CLJ 526; [2017] 3 MLJ 561 where the Federal Court held:

> [126] As regards the present s. 40D of the Act, since we have declared it to be unconstitutional, our decision is to have prospective effect. The doctrine of prospective overruling will apply here so as not to give retrospective effect to the declaration made.
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> ...
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> [128] In *Mohd Radzi*, the Federal Court had occasion to explain on the application of the doctrine of prospective overruling. Reference was made to the decision of the House of Lords in *Re Spectrum Plus Ltd; National Westminster Bank Plc v. Spectrum Plus Ltd And Others* [2005] UKHL 41. In the words of Lord Nicholls of Birkenhead:
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> > People generally conduct their affairs on the basis of what they understand the law to be. This 'retrospective' effect of a change in the law of this nature can have disruptive and seemingly unfair consequences. 'Prospective overruling', sometimes described as 'nonretroactive overruling', is a judicial tool fashioned to mitigate these adverse consequences. It is a shorthand description for court rulings on points of law which, to greater or lesser extent, are designed not to have the normal retrospective effect of judicial decisions.
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> ...
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> [131] The doctrine of prospective overruling was also applied in the case of *Public Prosecutor v. Dato' Yap Peng* [1987] 2 MLJ 311. The Supreme Court by a majority (Tun Mohamed Salleh Abas LP and Tan Sri Hashim Yeop A Sani SCJ dissenting) declared s. 418A of the Criminal Procedure Code to be unconstitutional and void as being an infringement of the provisions of art. 121(1) of the Federal Constitution. The court then applied the doctrine of prospective overruling so as not to give retrospective effect to the declaration made with the result that all proceedings of convictions or acquittals which had taken place under that section prior to the date of the judgment in that matter would remain undisturbed and not be affected.

[42] The Federal Court in *The Government Of Malaysia & Anor v. Aminah Ahmad* [2023] 8 CLJ 1; [2023] 5 MLJ 32 and Court of Appeal case of *Aminah Ahmad v. The Government Of Malaysia & Anor* [2022] CLJU 24; [2022] 1 LNS 24; [2022] 4 MLJ 74 where at the Court of Appeal held:

> [51] The general common law principle is that the decision of a court on a point of law is declaratory in nature. Courts declare what is and what has always been the law and it would thus have both retrospective and prospective effect as well. As was stated in the decision of this court in *Abdillah bin Labo Khan v. Public Prosecutor* [2002] 3 MLJ 298; [2002] 3 CLJ

521: 'It is a fundamental principle of adjudicative jurisprudence that all judgments of a court are retrospective in effect'. However, the law has evolved to afford courts, in appropriate cases, with a discretion to mitigate foreseeable adverse consequences and hardship, especially if it would otherwise affect a class of the citizenry. This may sometimes be achieved by invoking the doctrine of 'prospective overruling'; a ruling that is to be effective only prospectively. As Lord Nicholls described it in *Re Spectrum Plus Ltd; National Westminster Bank Plc v. Spectrum Plus Ltd and others* [2005] UKHL 41:

> Prospective overruling', sometimes described as 'non-retroactive overruling', is a judicial tool fashioned to mitigate these adverse consequences. It is a shorthand description for court rulings on points of law which, to greater or lesser extent, are designed not to have the normal retrospective effect of judicial decisions.

[54] In the case of *Sarwan Kumar v. Madan Lal Aggrawal* 2003 AIR 1475 (SC), the Supreme Court of India stated at p 1481 as follows:

> [13] ... Under the doctrine of 'prospective overruling' the law declared by the court applies to the cases arising in future only and its applicability to cases which have attained finality is saved because the repeal would otherwise work hardship to those who had entrusted to its existence. Invocation of the doctrine of 'prospective overruling' is left to the discretion of the court to mould with the justice of the cause or the matter before the court.

[55] In *Ling Peek Hoe & Anor v. Ding Siew Ching And Another Appeal* [2017] 5 MLJ 385, Richard Malanjum CJ (Sabah and Sarawak) (as His Lordship then was) in delivering the judgment of the Federal Court, after referring to the decisions of the Indian Supreme Court in *Sarwan Kumar* and *Golak Nath*, stated thus at p. 395:

> [27] We are of the view that the rationale on the applicability of the doctrine of prospective overruling as discussed by the Indian Supreme Court in the above cases is logical and sound. We have no good reason not to adopt it.

[56] As was pointed out by the Federal Court in *Ling Peek Hoe*, 'prospective overruling' has been applied by our courts. In the case of *Dato' Yap Peng*, the Supreme Court applied the doctrine so that its decision would leave undisturbed earlier convictions or acquittals. In *Mamat bin Daud & Ors v. Government of Malaysia* [1988] 1 MLJ 119, the Supreme Court by a majority declared null and void s. 298A of the Penal Code as being a provision that Parliament had no power to make under the Federal Constitution but ordered that its ruling should only take effect from the date of its order, namely, 13 October 1987. The jurisdiction was again invoked in *Repco Holdings Bhd v. Public Prosecutor* [1997] 3 MLJ 681, this time by the Court of Appeal, when it declared both s. 129(2) of the Securities Industry Act 1983 and s. 39(2) of the Securities Commission Malaysia Act 1993 to be unconstitutional, null and void

> [57] In Singapore, the Court of Appeal also found it had jurisdiction to apply the doctrine of prospective overruling and held that its jurisdiction, unlike that of the courts in India, would not be limited to constitutional cases.
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> [59] 'Prospective overruling' is clearly an exception to the general rule. We would also emphasise, and join the chorus, in cautioning that the doctrine of prospective overruling is a jurisdiction that is not to be employed lightly but with circumspection and only in exceptional circumstances. In cases involving the avoidance of a law, which has stood for some time, for being in contravention of the Federal Constitution, the doctrine of prospective overruling would be available to give effect to the raison d'etre for its existence. It would be available to the court to, in the words of Abdoolcader SCJ, give such retroactive effect to its decision as it thinks fit to be moulded in accordance with the justice of the cause or matter before it ... .
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> [60] For the reasons given above, and to mitigate the adverse consequences and hardship that the decision of the court may have on pensioners, we are of the view that this is an appropriate case, and in the public interest, for an order that the decision of this court is only to take effect prospectively from the date of the decision of this court, *ie*, 13 January 2022, and we so order. For the avoidance of any doubt, this decision would have effect on any pending proceedings, whether pending at first instance or pending appeal, in respect of issues relating to the declarations made.

[43] The Federal Court upheld the decision of the Court of Appeal, thereby affirming the principle that judicial decisions involving matters of public interest are to be applied prospectively.

[44] It is the humble view of this court that the retrospective invalidation of legislation or a legislative provision fundamentally undermines the principles of legal certainty, predictability, and the rule of law. These principles are essential to ensure that individuals and entities can rely on the law as it is written and applied at the time of their actions. Judicial declarations of invalidity, particularly when applied retroactively, have the potential to disrupt settled legal relationships and expectations, thereby creating confusion and injustice.

[45] As a general rule, unless there exist exceptional and compelling considerations of overriding public interest, judicial declarations of unconstitutionality or invalidity should operate prospectively only. In the humble view of this court, prospective application serves to preserve the integrity of past transactions and decisions that were undertaken in good faith reliance on the presumed validity of the impugned legislative provision.

[46] The retrospective application of such a ruling may expose parties, including private individuals, businesses, and government agencies, to legal liabilities, regulatory non-compliance, or loss of rights that were previously recognised under the invalidated provision. Accordingly, this court ought to exercise judicial restraint and caution when considering the temporal scope of its decisions, particularly in constitutional or administrative law contexts where the consequences of retrospective application are far-reaching.

[47] Moreover, this court must give due consideration to the fact that this case implicates matters of significant public interest, particularly given the substantial quantum involved. At the time the assessment for the year of assessment (YA) 2016 was made, the relevant statutory provision was part of duly enacted legislation, validly passed by Parliament and in force.

[48] In this context, the principle of prospective application in judicial decision-making becomes particularly pertinent. Where a court is asked to consider the legal validity of a statutory provision or its application, and the matter involves public interest or fiscal implications affecting the State, the general presumption is that any judicial declaration of invalidity should operate prospectively, that is, only from the date of the judgment forward. This approach upholds the principles of legal certainty and fairness, ensuring that parties who acted in reliance on the law as it stood at the relevant time are not unfairly prejudiced by subsequent judicial developments.

[49] This court alluded to the case of *Obata Ombak* (*supra*) where the Federal Court held:

> [165] As submitted by learned Senior Federal Counsel, Liew Horng Bin, *amicus curiae*, a retrospective invalidation of a legislation undermines legal certainty and predictability. Unless there is exceptional public interest requiring retrospective application, an order invalidating a legislation should only take effect prospectively. The invalidation of a legislation or any provision of the legislation would have serious ramifications and implications on those who would have relied on its validity in the past. There will not only be potential administrative chaos but commercial chaos affecting the housing industry which may affect house buyers as well. In *Boddington v. British Transport Lord Browne-Wilkinson* opined that: ... he was far from satisfied that an *ultra vires* act is incapable of having any legal consequence during the period between the doing of that act and the recognition of its invalidity by the court. During that period people will have regulated their lives on the basis that the act is valid. The subsequent recognition of its invalidity cannot rewrite history as to all the other matters done in the meantime in reliance on its validity.
>
> [166] Therefore, a careful consideration of the reliance interest is not only necessary but critical. Undoubtedly, laws must be given their full force and effect until they are declared invalid. An administrative decision made pursuant to a valid legislation before it is declared as does not mean that the decision was void *ab initio*. It remains validly and legally intact.

[167] We have given our utmost consideration on the facts and the law and we are of the view that if *Ang Ming Lee* is to have retrospective effect there would be serious ramifications and repercussions to the housing developers that had placed reliance on the existing law and diligently complied with the laws which were at that time valid.

[168] Therefore, based on the reasons we have stated above and the exceptional circumstances involved, the decision of *Ang Ming Lee* is prospective. To say otherwise that *Ang Ming Lee* applies retrospectively will result in great injustice and devastating consequences to the housing industry that had diligently complied with the laws before *Ang Ming Lee*. Thus, the principles enunciated in *Ang Ming Lee* will not apply to extensions granted by the Controller before *Ang Ming Lee*.

Conclusion

[50] For the aforementioned reasons, including the Federal Court cases of *Semenyih Jaya* (*supra*), *Aminah Ahmad* (*supra*) and *Obata-Ambak* (*supra*) which this court is bound by virtue of the doctrine of *stare decisis*, this court is of the considered view that the declaration of the Federal Court in *Wiramuda* (*supra*) that s. 4C of the ITA is unconstitutional is to be applied prospectively. This court further finds therefore that s. 4C of the ITA 1967 was a valid law during the assessment raised (YA 2016).

[51] This court therefore dismisses this application for judicial review. This court makes no order as to costs.